

Opinion issued July 7, 2022



In The
Court of Appeals
For The
First District of Texas

NO. 01-21-00547-CV

HARLEY CHANNELVIEW PROPERTIES, LLC, Appellant
V.
HARLEY MARINE GULF, LLC, Appellee

On Appeal from the 80th District Court
Harris County, Texas
Trial Court Case No. 2020-67063

MEMORANDUM OPINION

Appellant, Harley Channelview Properties, LLC, (“Channelview”) has filed an interlocutory appeal from the trial court’s order granting partial summary judgment in favor of appellee, Harley Marine Gulf, LLC (“HMG”). In three issues on appeal, Channelview argues that (1) this Court has appellate jurisdiction

because the trial court's order constitutes a temporary injunction; (2) the trial court abused its discretion when it required Channelview to convey title before final judgment; and (3) the trial court abused its discretion in granting injunctive relief.

We dismiss the interlocutory appeal for lack of jurisdiction.

Background

On January 31, 2011, Channelview, as landlord, entered into a Consolidated Lease Agreement and Moorage Agreement with appellee, HMG, as tenant, covering a maritime facility along the Houston Ship Channel.¹ As part of the lease agreement, the parties agreed that HMG had an option to purchase the property and obligated Channelview to convey the property in Channelview, Texas, for a fixed sum of \$2.5 million. The option to purchase further stated that HMG could exercise its option "during the Lease Term or any Renewal Term." The lease agreement also referenced a separate Option to Purchase Agreement, which was executed on January 31, 2011. After entering into the lease agreement, the parties executed a number of amendments to the lease.

On September 15, 2020, HMG provided notice to Channelview of HMG's intent to exercise the purchase option. After Channelview disputed the

¹ The initial lease was between Holland Real Estate, LLC, as landlord and HMG as tenant. On December 20, 2012, Holland sold the properties subject to the lease to Channelview pursuant to a Real Estate Purchase and Sale Agreement dated December 20, 2012. Holland and Channelview also entered into an Assignment and Assumption Agreement on December 28, 2012.

enforceability of the option agreement and did not attend closing, HMG sued Channelview for breach of the option agreement, and HMG sought specific performance of the option agreement. On February 10, 2021, HMG moved for partial summary judgment on its claim for breach of the option agreement and specific performance. Channelview answered the suit and responded to the motion for partial summary judgment, arguing that the fixed-price option to purchase was extinguished by HMG's failure to exercise its right of first refusal before the property was sold by the previous owner. Channelview further argued that the trial court should deny the motion for partial summary judgment because of Channelview's affirmative defenses of mutual mistake, unilateral mistake, unconscionability, and repudiation.

On September 2, 2021, Channelview filed its original counterclaims, seeking declaratory relief, reformation/mutual mistake, rescission/mutual mistake, and promissory estoppel.

After a hearing, the trial court signed a September 20, 2021 order, granting HMG's motion for partial summary judgment, finding that Channelview breached the Option to Purchase Commercial Real Estate Agreement and that HMG performed all obligations required to be entitled to relief. The trial court further granted HMG specific performance, ordering the sale of the Purchase Option Property to include (a) commercial property at 239 & 311 Lakeside Dr.

Channelview, Texas, (b) all adjacent water use authorizations, rights, license or lease to the adjacent Houston Ship Channel, and (c) all improvements located at and/or made upon the foregoing. The trial court ordered the parties to close within 30 days and required HMG to deposit the full purchase price into the title company's escrow account, where it would remain until final judgment. The trial court's order stated that it was interlocutory and that additional HMG claims remained pending, including attorney's fees and HMG's entitlement to offset the rent it had paid since exercising its purchase option.

Channelview filed an emergency motion for rehearing and reconsideration of the trial court's September 20, 2021 order, arguing that the order constituted a temporary mandatory injunction. HMG filed a response to the emergency motion for rehearing and noted that Channelview's counterclaims were improper. After another hearing, trial court signed an October 8, 2021 order, denying Channelview's motion for rehearing and reconsideration.

On October 12, 2021, Channelview filed an interlocutory appeal, No. 01-21-00547-CV, challenging the trial court's order on motion for partial summary judgment as a temporary injunction.² Channelview also filed a motion for

² See TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4) (permitting interlocutory appeal of order granting temporary injunction).

emergency relief, requesting a stay of the trial court's order that ordered Channelview to convey the property to HMG within 30 days.³

Temporary Injunction

In this proceeding, Channelview contends that the trial court's order on partial summary judgment granted a temporary injunction. Channelview thus contends that we have interlocutory jurisdiction pursuant to section 51.014(a)(4). *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4). HMG disagrees, arguing that the trial court's partial summary judgment order granted relief on the merits and is final, permanent relief.

Generally, an appeal may be taken only from a final judgment disposing of all parties and all claims. *Lehmann v. Har-Con Corp.*, 39 S.W.3d 191, 195 (Tex. 2001). In section 51.014(a)(4) of the Civil Practice and Remedies Code, the Legislature provides that "a person may appeal from an interlocutory order of a . . . district court . . . that . . . grants or refuses a temporary injunction." *See* TEX. CIV. PRAC. & REM. CODE § 51.014(a)(4). We base our determination as to whether the

³ On October 12, 2021, Channelview filed a petition for writ of mandamus, No. 01-21-00548-CV, arguing that the trial court abused its discretion in compelling specific performance of an expired option contract and that if the partial summary judgment order is not a temporary injunction, Channelview lacks an adequate remedy by appeal. Channelview also filed a motion for emergency relief, seeking a stay of the trial court's order, directing it to convey the property to HMG within 30 days. On October 18, 2021, this Court granted Channelview's motion to stay on the condition that Channelview file a good and sufficient bond in compliance with Rule 24. *See* TEX. R. APP. P. 24, 52.10(b). On November 17, 2021, Channelview informed this Court that it had complied with our order by filing a bond for the full amount requested by HMG.

trial court granted or refused a temporary injunction in an order on the substance, character, and function of the order, not on its form or title. *See Del Valle ISD v. Lopez*, 845 S.W.2d 808, 809 (Tex. 1992); *see also J.C. Matlock v. Data Processing Sec., Inc.*, 618 S.W.2d 327, 328 (Tex. 1981) (stating that purpose of temporary injunction is to preserve status quo pending trial on merits).

Here, HMG moved for partial summary judgment as a matter of law on the merits of its breach-of-the-option-agreement claim. Channelview responded to the motion for partial summary judgment, arguing that HMG's claims failed as a matter of law. The trial court's September 20, 2021 order found that Channelview breached the option agreement with HMG and granted specific performance, ordering Channelview to convey the property within 30 days. The trial court's order also stated that it was interlocutory, and that additional HMG claims remained pending, including attorney's fees and HMG's entitlement to offset the rent it had paid since exercising its purchase option. Notably, the trial court's order did not leave the issue of whether Channelview breached the option agreement as a remaining issue.

Although Channelview does not point to any part of the substance, character, or form of the trial court's order on partial summary judgment to show that it is temporary, *see Del Valle ISD*, 845 S.W.2d at 809, Channelview implies the temporary nature of the order when it states, "This order commands prejudgment

action and governs the parties’ conduct ‘until Final Judgment’” and the order “governs the parties’ conduct only ‘until Final Judgment.’” We disagree with Channelview’s interpretation of the trial court’s order on partial summary judgment. Nothing about the trial court’s order indicates that its decision finding in favor of HMG on the breach-of-the-option agreement is of a temporary nature that will eventually change upon final judgment. Likewise, HMG neither sought a temporary injunction, nor did it seek temporary relief. Instead, it sought permanent relief on its breach-of-the-option-agreement claim and the trial court agreed, finding in HMG’s favor and ordering specific performance. Accordingly, we conclude that the order grants permanent relief to HMG on its breach-of-the-option-agreement claim and does not constitute an order granting a temporary injunction. *See L Series, L.L.C. v. Holt*, 571 S.W.3d 864, 870 (Tex. App.—Fort Worth 2019, pet. denied) (holding that trial court’s order did not grant temporary injunction because it granted “complete relief on . . . breach of contract claim” and “the order [did] not contemplate any further action on the merits of that claim”); *El Caballero Ranch, Inc. v. Grace River Ranch, LLC*, No. 04-15-00127-CV, 2015 WL 6163221, at *3 (Tex. App.—San Antonio Oct. 21, 2015, no pet.) (mem. op.) (holding that, “[u]nlike a temporary injunction,” the injunction in that case served “to implement the trial court’s ultimate determination on the merits”); *Young v. Golfing Green Homeowners Ass’n, Inc.*, No. 05-12-00651-CV, 2012 WL 6685472,

at *2 (Tex. App.—Dallas Dec. 21, 2012, no pet.) (mem. op.) (concluding that partial summary judgment granting permanent injunctive relief was not appealable as temporary injunction). Because we conclude that the trial court’s order on partial summary judgment cannot be construed as an order granting a temporary injunction, we lack interlocutory jurisdiction.⁴ See *Tex. A & M Univ. Sys. v. Koseoglu*, 233 S.W.3d 835, 840–41 (Tex. 2007) (“We strictly construe [s]ection 51.014(a) as ‘a narrow exception to the general rule that only final judgments are appealable.’” (quoting *Bally Total Fitness Corp. v. Jackson*, 53 S.W.3d 352, 355 (Tex. 2001))).

We dismiss the appeal for lack of jurisdiction. We dismiss any pending motions as moot.

PER CURIAM

Panel consists of Chief Justice Radack and Justices Countiss and Farris.

⁴ We also note that since this proceeding and a parallel mandamus proceeding, No. 01-21-00548-CV, were filed, Channelview obtained a supersedeas bond, which stays execution of the trial court’s order on motion for partial summary judgment. See TEX. R. APP. P. 24. After final judgment, Channelview will have the right to appeal the order at issue in this appeal. See *Bonsmara Nat. Beef Co. v. Hart of Texas Cattle Feeders, LLC*, 603 S.W.3d 385, 387 (Tex. 2020) (“Our rule has long been that ‘a party against whom an interlocutory [order] has been rendered will have his right of appeal when . . . the same is merged in a final judgment disposing of the whole case.’”) (citing *Teer v. Duddleston*, 664 S.W.2d 702, 704 (Tex. 1984)).